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7 Attorneys for the United States of America

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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR0992-H
	)	
12 Plaintiff,	)	DATE: May 12, 2008
	)	TIME: 2:00 p.m.
13 v.	)	
	)	
14 RUBEN RODRIGUEZ,	)	
	)	GOVERNMENT'S RESPONSE AND
	)	OPPOSITION TO DEFENDANT'S
15	)	MOTIONS:
	)	
16 Defendant.	)	(1) TO COMPEL DISCOVERY
	)	(2) FOR LEAVE TO FILE FURTHER
17	)	MOTIONS
	)	
18	)	TOGETHER WITH STATEMENT OF FACTS,
	)	MEMORANDUM OF POINTS AND
19	)	AUTHORITIES AND GOVERNMENT'S
	)	MOTIONS FOR RECIPROCAL DISCOVERY
20	)	AND FINGERPRINT EXEMPLARS

21 The United States of America, by its counsel, Karen P. Hewitt,  
22 United States Attorney, and Paul S. Cook, Assistant United States  
23 Attorney, hereby responds to and opposes Defendants' above-captioned  
24 Motions. This response and opposition is based upon the files and  
25 records of the case, together with the attached statement of facts and  
26 memorandum of points and authorities. The Government also hereby  
27 files its motion for reciprocal discovery and fingerprint exemplars.  
28

I  
**STATEMENT OF FACTS**

On Thursday, March 13, 2008 at 7:08 p.m., Defendant made application for admission into the United States from Mexico at the pedestrian lanes at San Ysidro, California Port of Entry (POE). He falsely claimed he was a United States citizen going to San Diego. He did not present any immigration or identification documents to the CBP Officer, but maintained that he was an American citizen. Defendant was escorted to the secondary area where a check of his fingerprints revealed that he was a deported alien who had been administratively removed from the United States on July 31, 1998, January 10, 2002, and December 8, 2005. Defendant invoked his right to remain silent.

Defendant was most recently ordered deported by an Immigration Judge in Tacoma, Washington, on March 6, 2008. Defendant has prior convictions for two counts of 8 U.S.C. § 1325 in 1999, and one count of 8 U.S.C. § 1326 in 2003, both in the District of Oregon.

II  
**THE GOVERNMENT HAS AND WILL CONTINUE TO COMPLY WITH  
ITS DISCOVERY OBLIGATIONS**

The United States is aware of its discovery obligations, and will continue to comply with its obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jencks Act (18 U.S.C. §3500) and Rule 16 of the Federal Rules of Criminal Procedure. and will continue to comply with all discovery rules. The United States has provided Defendants with 80 pages of discovery including: the arrest reports, the Defendant's criminal history; a CD of Defendant's interview; and immigration documents relevant to his deportations. Regarding some of the

1 specific requests made by the Defendant which are not covered by the  
2 above acknowledgment, the United States responds as follows:

3 1. A-File and Deportation Tape

4 The United States opposes Defendant's request to inspect and  
5 receive a complete copy the entire Alien Registration File ("A-File")  
6 associated with Defendant, since the A-File is not Rule 16  
7 discoverable information. The Government has produced and will  
8 continue to produce relevant immigration documents from the  
9 Defendant's A-File. However, the A-File also contains information  
10 that is not discoverable, such as internal government documents and  
11 witness statements. (See Fed. R. Crim. P. 16(a)(2)). The United  
12 States will produce documents it intends to use in its case-in-chief.  
13 A fishing expedition through the A-file is not warranted. Evidence  
14 is material under Brady only if there is a reasonable probability that  
15 had it been disclosed to the defense, the result of the proceeding  
16 would have been different. See United States v. Antonakeas, 255 F.3d  
17 714, 725 (9th Cir. 2001). Defendant has not specified which documents  
18 in the A-File are material, and to which he is entitled.

19 The Government will provide Defendant a copy of his March 6,  
20 2008, Deportation Hearing tape.

21 **III**

22 **LEAVE TO FILE FURTHER MOTIONS**

23 The Government has no objection to this motion.

24 **IV**

25 **THE GOVERNMENT'S MOTION FOR RECIPROCAL  
DISCOVERY SHOULD BE GRANTED**

26 The discovery provided to Defendants, at their request, includes  
27 documents and objects which are discoverable under Rule 16(a)(1)(E).  
28

1 Consequently, the Government is entitled to discover from the  
2 defendant any books, papers, documents, data, photographs, tangible  
3 objects, buildings or places, or copies or portions of any of these  
4 items that are in Defendant's possession, custody or control and which  
5 Defendant intends to use in the Defendant's case-in-chief. See Rule  
6 16(b)(1)(A), Fed. R. Crim. P..

7 Fed. R. Crim. P. 26.2 requires the production of prior statements  
8 of all witnesses, except Defendants'. The new rule thus provides for  
9 the reciprocal production of Jencks statements. The time frame  
10 established by the rule requires the statement to be provided after  
11 the witness has testified, as in the Jencks Act. Therefore, the  
12 United States hereby requests that Defendants be ordered to supply all  
13 prior statements of defense witnesses by a reasonable date before  
14 trial to be set by the Court. This order should include any form  
15 these statements are memorialized in, including but not limited to,  
16 tape recordings, handwritten or typed notes or reports.

17 V

18 **MOTION FOR FINGERPRINT EXEMPLARS**

19 The United States requests that the Court order that Defendant  
20 make himself available for fingerprinting by the United States'  
21 fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d  
22 567, 576-77 (9<sup>th</sup> Cir. 2005) (Government may have defendant  
23 fingerprinted and use criminal and immigration records in Section 1326  
24 prosecution). Defendant's fingerprints are not testimonial evidence.  
25 See Schmerber v. California, 384 U.S. 757 (1966). Using identifying  
26 physical characteristics, such as fingerprints, does not violate  
27 Defendant's Fifth Amendment right against self-incrimination. United

1 States v. DePalma, 414 F.2d 394, 397 (9<sup>th</sup> Cir. 1969); see also United  
2 States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

3  
4 **VI**  
**CONCLUSION**

5 For the above stated reasons, the Government respectfully  
6 requests that the Defendant's motions be denied, except where  
7 unopposed, and the Government's motion for reciprocal discovery and  
8 fingerprint exemplars be granted.

9 Date: May 6, 2008.

10 Respectfully submitted,

11 KAREN P. HEWITT  
12 United States Attorney

13 s/Paul S. Cook  
14 PAUL S. COOK  
15 Assistant United States Attorney  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08cr0992-H  
)  
Plaintiff, )  
)  
v. )  
) CERTIFICATE OF SERVICE  
)  
RUBEN RODRIGUEZ, )  
)  
Defendant. )  
\_\_\_\_\_ )

IT IS HEREBY CERTIFIED THAT:

I, Paul S. Cook, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Response and Opposition to Defendant's Motions on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Victor Pippins

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2008.

s/Paul S. Cook

PAUL S. COOK